

VIRGINIA PORT AUTHORITY

NORFOLK, VIRGINIA

**REPORT ON AUDIT
FOR THE YEAR ENDED
JUNE 30, 2003**

APA

**Auditor of
Public Accounts**

COMMONWEALTH OF VIRGINIA

AUDIT SUMMARY

Our audit of the Virginia Port Authority for the year ended June 30, 2003, found:

- internal control matters that we consider to be reportable conditions, however, we do not consider any of these to be material weaknesses;
- instances of noncompliance with laws and regulations listed below that are required to be reported; and
- adequate corrective action of prior audit findings except for the matter listed below related to Travel Controls.

Our findings include:

- Comply with the Davis Bacon Act
- Strengthen Travel Controls.

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November 14, 2003

The Honorable Mark R. Warner
Governor of Virginia

The Honorable Kevin G. Miller
Chairman, Joint Legislative Audit
and Review Commission

Board of Commissioners
Virginia Port Authority

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE AND ON
INTERNAL CONTROL OVER FINANCIAL REPORTING

We have audited the financial statements of the governmental activities and each major fund of the **Virginia Port Authority**, a component unit of the Commonwealth of Virginia, as of and for the year ended June 30, 2003, and have issued our report thereon dated November 14, 2003. Our report on the financial statements is included in the Financial Report issued by the Port Authority. We submit herewith our report on compliance and internal control over financial reporting.

In planning and performing our audit of the financial statements of the Port Authority as of and for the year ended June 30, 2003, we considered internal controls over financial reporting and tested compliance with certain provisions of laws, regulations, contracts, and grants in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards.

Compliance

As part of obtaining reasonable assurance about whether the Port Authority's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance that are required to be reported under Government Auditing Standards. Instances of noncompliance entitled, "Comply with the Davis Bacon Act" and "Strengthen Travel Controls" are described in the section of the report titled, "Internal Control and Compliance Findings and Recommendations."

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Port Authority's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. However, we noted certain matters involving the internal control over financial reporting and its operation that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect the Port Authority's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Reportable conditions, entitled "Comply with the Davis Bacon Act" and "Strengthen Travel Controls" are described in the section titled, "Internal Control and Compliance Findings and Recommendations."

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe none of the reportable conditions described above is a material weakness.

The Port Authority has not taken adequate corrective action with respect to the previously reported finding "Strengthen Controls Over Travel Regulations." Accordingly, we included this issue entitled "Strengthen Travel Controls" in the section titled, "Internal Control and Compliance Findings and Recommendations." The Port Authority has taken adequate corrective action with respect to audit findings reported in the prior year that are not repeated in this report.

The Independent Auditor's Report on Compliance and on Internal Control Over Financial Reporting is intended solely for the information and use of the Governor and General Assembly of Virginia, the Board of Commissioners and management, and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

EXIT CONFERENCE

We discussed this report with management at an exit conference held on December 10, 2003.

AUDITOR OF PUBLIC ACCOUNTS

DBC:kva
kva:

INTERNAL CONTROL AND COMPLIANCE FINDINGS AND RECOMMENDATIONS

Comply with the Davis Bacon Act

The Port Authority did not comply with the provisions of the Davis Bacon Act for construction contracts entered into under the new federal Port Security grant. The Port Authority received a federal grant totaling \$5,293,140 from the United States Department of Transportation, Maritime Administration, to improve security around the ports of Virginia in the wake of the terrorist attack on September 11, 2001. During fiscal year 2003, the Port Authority spent \$838,795 of which they used \$433,135 on construction projects. Section 49 CFR 18.36(i)(5) "Procurement" of the Code of Federal Regulations requires that grantee's and subgrantee's contracts must contain provisions to ensure compliance with the Davis Bacon Act. The Davis Bacon Act requires that all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the Department of Labor. Construction contracts include contracts for the actual construction, alteration and/or repair including painting and decorating, of a public building or public work, or building or work financed in whole or in part from federal funds. The contract must include a clause requiring payment of prevailing wages.

The Port Authority spent \$433,135 on construction contracts for the replacement and improvement of rail gates and fencing to improve physical security around the ports. However, the Port Authority did not include provisions in their contracts to ensure payment of prevailing wages to the laborers and mechanics employed through the contracts. As a result, we must question the costs of \$433,135.

Since the original Port Security grant, the Port Authority has received additional grants from the Maritime Administration. The Port Authority needs to develop and implement controls to ensure that all construction contracts funded in whole or in part from federal funds from the original grant and future grants comply with the requirements of the Davis Bacon Act.

Agency Response: *See Port Authority's response at page 6 of this report.*

Strengthen Travel Controls

The Port Authority has historically had numerous exceptions to state travel regulations in order to provide personnel with flexibility while on official business for marketing purposes. After an investigation by the Governor in August 2002, the Port Authority lost these exceptions and had to follow the state travel regulations. The Port Authority has since revised their agency policies and the Board approved the new travel policies effective February 2003, again giving the Port Authority exceptions to state travel regulations. These exceptions do not, however, lessen the agency's obligation to maintain compliance with the policies set forth to ensure that reimbursements are only for reasonable and necessary expenses.

As indicated by the following, the Port Authority needs to strengthen controls over travel guidelines.

- The Port Authority does not properly document the information required when reimbursing employees for business meals and entertainment expenses. When an agency employee is incurring costs for potential clients, they must document the specific business topic discussed and the specific time the business discussion took place. The agency failed to document this information for all ten vouchers tested.

Without documenting the specifics of the event, it is not possible to determine the reasonableness and necessity of the expenses incurred.

- Of the ten vouchers reviewed, there were three instances where the Port Authority reimbursed employees for business meal or entertainment costs without itemized, detailed receipts. Without the proper documentation of detailed receipts, it is not possible to determine whether the expenses incurred are reasonable.

In addition, the Appropriation Act gives the Port Authority the authority “to expend from special funds amounts not to exceed \$25,000 for entertainment expenses commonly borne by businesses.” This Act also requires the agency to record separately these expenses, which could include alcohol served with clients, golf outings with clients, and tobacco products given for promotional gifts. The Port Authority does have an account to track such expenses, but without itemized, detailed receipts, it is impossible to appropriately track the expenses.

- The Port Authority reimbursed employees for Internet usage without proper documentation. The Port Authority’s travel policies and procedures require documentation of the reason for business calls, facsimiles, and Internet usage on vouchers before making reimbursement. Of the ten vouchers reviewed, there were six instances where employees connected to the Internet while traveling and did not state the reason for doing so. Without proper documentation, it is not possible to determine the necessity of the expenses incurred.

The Port Authority should comply with its own travel policies and procedures. To achieve compliance, they should properly document the information required when reimbursing employees for business meals and entertainment expenses, attach itemized receipts to reimbursements for business meals or entertainment costs, and document the reason for Internet usage while traveling. By following the procedures, the Port Authority will be able to appropriately track travel and entertainment expenses and reduce the risk of inappropriate charges.

Agency Response: See Port Authority’s response at page 7 of this report.



COMMONWEALTH of VIRGINIA

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Virginia Port Authority
600 World Trade Center
Norfolk, Virginia 23510-1679
Telephone (757) 683-8000
Fax (757) 683-8500

J. Robert Bray
Executive Director

December 16, 2003

David A. Von Moll
State Comptroller
Virginia Department of Accounts
P.O. Box 1971
Richmond, VA 23218

Subject: Response to Internal Control Findings and Recommendations of the Auditor of Public Accounts

Dear Mr. Von Moll:

In compliance with the Commonwealth Accounting Policies and Procedures (CAPP) Manual, Section 10200, Financial Management, the Virginia Port Authority (VPA) is submitting its response to the "Internal Control Findings and Recommendations" of the Auditor of Public Accounts' Report on Audit for the Year Ended June 30, 2003.

Should you have any questions or require additional information, please contact me at (757) 683-2170.

A handwritten signature in dark ink, reading "Rodney W. Oliver".

Rodney W. Oliver

Director of Finance and Treasurer to the Board

Enclosure

cc: The Honorable Whittington W. Clement, Secretary of Transportation
Walter J. Kucharski, Auditor of Public Accounts
Richard D. Brown, Department of Planning and Budget

During the Virginia Port Authority's (VPA) annual audit, the Auditor of Public Accounts routinely considers internal controls to determine financial statement auditing procedures. Although the Auditor provides no assurance about internal controls, reportable conditions are noted in his report.

The following internal control matters are included in the VPA Report on Audit for the year ended June 30, 2003:

1. Comply with the Davis Bacon Act.
2. Strengthen Travel Controls.

Review of the Auditors findings reveal significant mitigating circumstances surrounding each condition that keep them from having a material affect on financial reporting.

Findings of the Auditor:

1. Comply with the Davis Bacon Act

The audit states, "The Port Authority did not comply with the provisions of the Davis Bacon Act for construction contracts entered into under the new federal Port Security grant...The Port Authority needs to develop and implement controls to ensure that all construction contracts funded in whole or in part from federal funds from the original grant and future grants comply with the provisions of the Davis Bacon Act."

VPA Response:

Prior to December 9, 2003 MARAD Contracting/Grants Officers (CGO) had consistently indicated that VPA procurement rules controlled any and all issues relating to procurement. Although you have noted that VPA's commercial procedures were not posted to the grant web site until recently, VPA's procurement policies and procedures were previously approved by the CGO. Only after considerable discussion between the MARAD CGO, VPA personnel, and the APA, did the VPA finally receive a statement that in the CGO's opinion, the Davis Bacon Act applied to the audited projects.

There is no statement that the Act applies in the grant application or award materials, nor is there such a statement in OMB Circular A-102, the applicable federal circular for this grant. The only indication that the Davis Bacon Act might have applied to this particular grant was on the OMB website that references a "Codification of Governmentwide Grant Requirements by Department". This website also states that applicants or grantees are asked to consult with the grantmaking agency regarding requirements. It is unclear at this point as to whether the granting agency will be justified in enforcing the CGO's recent declaration, based on the course of dealing or perhaps even an implied warranty of specification. VPA may also appeal the wage rates or obtain a project wage determination. We reserve the right to take any appropriate action to comply with the terms and conditions of the grant. If it is determined that the Davis Bacon Act does apply to this grant, and that contractors did not pay prevailing wages, the VPA will diligently work with contractors to resolve this issue to the satisfaction of MARAD administrators. In addition, the VPA will develop and implement policies and procedures for administering federally funded projects.

2. Strengthen Travel Controls

The audit states the following:

- “When an agency employee is incurring costs for potential clients, they must document the specific business topic discussed and the specific time the business discussion took place. The agency failed to document this information for all ten vouchers tested.”
- “Of the ten vouchers reviewed, there were three instances where the Port Authority reimbursed employees for business meal or entertainment costs without itemized, detailed receipts. Without the proper documentation of detailed receipts, it is not possible to determine whether the expenses incurred are reasonable.”
- “The Port Authority’s travel policies and procedures require documentation of the reason for business calls, facsimiles, and internet usage on vouchers before costs are reimbursed. Of the ten vouchers reviewed, there were six instances where employees connected to the internet while traveling and did not state the reason for doing so.”

VPA Response:

- On all ten vouchers tested by the Auditor, employees provided a receipt (which identified the cost, location, and time of the meeting/event) and the names and company affiliation of all individuals present. However, those employees did not identify the specific business topic discussed or the specific time the business discussion took place (i.e., before, during, or after the event) as required by the VPA’s travel regulations. The VPA now requires this information prior to reimbursement.
- On the ten vouchers tested by the Auditor, there were a total of 30 meal and entertainment charges reimbursed. Of those 30 charges, three were reimbursed with a credit card receipt that did not itemize the charges. In two of those three cases, the employee made a statement that the itemized receipt was lost and could not be recovered. In all three of those cases the expenses were charged to the VPA’s appropriation for “entertainment expenses commonly borne by businesses”. While under current policies the VPA should not have reimbursed employees for those expenses, we believe those charges were legitimate expenses incurred during the normal course of business. The VPA now requires itemized receipts for all meal and entertainment expenses.
- Of the six instances noted by the auditor in which the employee did not state a reason for having internet charges, all six were for marketing employees. Marketing employees travel frequently. While on travel they are required to maintain contact with the home office and with customers. It is generally understood that marketing employees will incur internet connection charges to download, respond, and send work related email messages. However, as VPA policy requires a reason to be stated on the travel voucher, the VPA now requires an explanation for all such charges.

VIRGINIA PORT AUTHORITY
Norfolk, Virginia

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